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10/561,321

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EXAMINER

ZURITA, JAMES H

ART UNIT

PAPER NUMBER

3625

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/561,321	<b>Applicant(s)</b> HARINARAYAN ET AL.	
	<b>Examiner</b> JAMES ZURITA	<b>Art Unit</b> 3625	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 27 March 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 10-22 is/are rejected.
- 7) ☒ Claim(s) 9 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)         | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### *Drawings*

The drawings are objected to under 37 CFR 1.83(a) because they fail to show

Fig. 3, references 302, 304, 306 and 308  
Fig. 4, reference 260

The proposed starting price must be shown or the feature(s) canceled from the claim(s). No new matter should be entered. MPEP § 608.02(d).

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action.

The objection to the drawings will not be held in abeyance.

***Rejections under 35 USC 101***

Claim 16 is rejected under 35 U.S.C. 101 because the claim is directed to different statutory classes, an article [claim 16] and to a method [claim 1]. MPEP 2173.05(p).

Prior Art will be interpreted to read on Claim 16 where Prior Art discloses structural components that are reasonable capable of performing applicant's intended functions. The Examiner notes that nothing in applicant's structure distinguishes the instant invention from the structure of the reference.

***Rejections under 35 USC 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 16 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 16 is directed to both an apparatus and the method steps of using the apparatus. MPEP 2173.05(p).

The phrase means for in claim 17 appears to be an attempt to use a "means" clause to recite a claim element as a means for performing a specified function. However, since no function is specified by the word(s) preceding "means," it is impossible to determine the equivalents of the element, as required by 35 USC 112, sixth paragraph. See *Ex parte Klumb*, 159 USPQ 694 (Bd. App. 1967).

Claims 2, 5 and 19 refer to "...posting...a feature request..." The term "...featured request..." is not defined.

Claims 5-7 refer to "...currently listed item..." and it is not clear whether they refer to the first item, second item, third item or yet another item.

Claims 1-22 refer to listing and posting and it is not clear whether applicant claims a patentable distinction between the two terms. The Examiner relies on paragraph 0031, which states, in part:

[0031] As described above, a listing may be thought of as an electronic posting for an item to be auctioned. The term " listing" may also be used in its verb form to represent the act of presenting an auction item for sale through an online auction service.

For purposes of examination, the limitations listing and posting are interpreted as having been met where prior art discloses either term.

Claims 1, 3, 17, 18 and 20 refer to a proposed starting price that is identified:

[0037]...proposed starting price set equal to or less than a first reserve price, which in the illustrated embodiment corresponds to a target sale price.

For purposes of Examination, the limitation is interpreted as having been met where prior art discloses a target sale price.

### ***Claim Objections***

Claims 1, 10, 17 and 18 appear to have minor typographical errors:

In Claims 1, 17 and 18 ...positing... should be amended to ...posting...

As to claim 10, please refer to MPEP 601.08(m) for proper format.

Appropriate correction is required.

Claim 16 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is

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required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form and pay the appropriate fees.

Claim 16 is written in dependent format in that they reference prior method claim 1. However, claim 16 does not further limit the steps involved in the parent method claim. Claim 16 is also improper because they fail the "infringement test" (see MPEP 608.01(n), Section III). Applying the Infringement test, what is needed to infringe claims claim 16 is, for example an apparatus that would cause a computer to do the steps recited in claim 1. However, such an apparatus would not infringe the method steps of claim 1 since the apparatus itself never performs any of the active steps required by the method of claim 1. In other words, mere possession of such a CD-ROM would infringe claim 16 but would not infringe claim 1. As such claim 16 is an improper dependent claim.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-xyz are rejected under 35 U.S.C. 103(a) as being unpatentable Lin-Hendel (US 7542920) in view of Naylor et al. (PG-PUB 20010049648).

As per claim 1, Lin-Hendel discloses computer implemented method(s) for controlling automated selling of multiple items through an online auction service

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implemented by one or more networked servers (.e.g, Lin-Hendel, the Internet, as in col. 2, lines 4-19), comprising:

listing for sale with the online auction service a first item (e.g., Lin-Hendel, Fig. 1B3 and related text), including posting to the one or more networked servers data for a first item, including data such as a first listing duration for the first item (e.g., LH, duration, as in col. 2, lines 4-18)

in response to a demand event occurring within the online auction service with respect to the first item (e.g., LH, demand event such as when a highest bid goes beyond a certain price, as in col. 6, lines 32-37);

listing for sale with the online auction service a second item, including posting to the one or more networked servers data for a second item; and

associating for the one or more networked servers, the first item with the second item (e.g., LH, Fig. 4C and related text, col. 6, lines 38-42).

As per claim 1, Lin-Hendel does not specifically disclose posting, for each item, a first reserve price corresponding to a first target sale price and a first proposed starting price set equal to or less than the first reserve price.

Naylor discloses establishing a first reserve price e.g., Naylor, para 0018, Fig. 4 and related text) corresponding to a first target sale price (e.g., Naylor, para 146) and a first proposed starting price set equal to or less than the first reserve price.

It would have been obvious to one of ordinary skill in the art at the time of invention to have modified the invention of Lin-Hendel to have included, for each item

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listed, a reserve price corresponding to a target sale price and a proposed starting price set equal to or less than the reserve price as taught by Naylor because

(a) the incorporation of such features is no more than the predictable use of prior art elements according to their established function; further

(c) it was well within the capabilities of one of ordinary skill in the art at the time of Appellant's invention to use known techniques to improve similar devices, methods and products; further

(d) it was well within the capabilities of one of ordinary skill in the art at the time of Appellant's invention to apply a known technique to a known device, method and product ready for improvement to yield predictable results.

As per claim 2, Lin-Hendel discloses featuring the first item with the online auction service, including posting a feature request with the one or more networked servers (e.g., LH, Figs. 2A-2B and related text).

As per claim 3, Lin-Hendel discloses listing an additional item coincident with the first item with the online auction service, including posting to the one or more networked servers data for an additional item (e.g., Lin-Hendel, Fig. 1B3 and related text and duration, as in col. 2, lines 4-18).

As per claim 3, Lin-Hendel **does not** specifically disclose posting, for the additional, third item, a third reserve price associated with a third target sale price, and a third proposed starting price set equal to or below the third reserve price. Naylor discloses establishing a first reserve price e.g., Naylor, para 0018, Fig. 4 and related text) corresponding to a first target sale price (e.g., Naylor, para 146) and a first proposed starting price set equal to or less than the first reserve price.

It would have been obvious to one of ordinary skill in the art at the time of invention to have modified the invention of Lin-Hendel to have included, for each item listed, a reserve price corresponding to a target sale price and a proposed starting price set equal to or less than the reserve price as taught by Naylor because



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(a) the incorporation of such features is no more than the predictable use of prior art elements according to their established function; further

(c) it was well within the capabilities of one of ordinary skill in the art at the time of Appellant's invention to use known techniques to improve similar devices, methods and products; further

(d) it was well within the capabilities of one of ordinary skill in the art at the time of Appellant's invention to apply a known technique to a known device, method and product ready for improvement to yield predictable results.

As per claim 4, Lin-Hendel discloses that the listing of the additional item further comprises posting to the one or more networked servers a listing duration for the additional item that is shorter than the first listing duration of the featured first item (e.g., Lin-Hendel, Fig. 2B, time left).

As per claim 5, Lin-Hendel discloses featuring a currently listed item when a demand event associated with the featured first item occurs, including posting to the one or more networked servers a feature request for the currently listed item. See, for example, Lin-Hendel, Figs. 2A-B and related text.

As per claim 6, Lin-Hendel discloses identifying a listing start time for a listed item, including posting to the one or more networked servers the listing start time for the listed item ; and

determining a listing duration for the listed item based at least in part upon the identified listing start time, including posting to the one or more networked servers the listing duration for the listed item. See, for example, Lin-Hendel, Fig. 1C1 and related text for references to start time.

As per claim 11, Lin-Hendel and Naylor disclose posting to the one or more networked servers the first item as an immediately purchasable item (e.g., Naylor, para 0018).

As per claim 12, Lin-Hendel discloses demand events such as when a highest bid goes beyond a certain price (e.g., Lin-Hendel, col. 6, lines 32-37). Naylor discloses that the demand event occurs when a bid at least equals the first reserve price (e.g., para 0018).

As per claim 13, Lin-Hendel discloses that the first item corresponds to a first class of items and the second item corresponds to a second class of items (e.g., Lin-Hendel, Figs. 2A-2B and related text concerning featured items and categories).

As per claim 14, Lin-Hendel discloses that at least one of the first class and second class of items comprises an advertising class (e.g., Lin-Hendel and Fig. 2B, and advertisement for “living room set”)

As per claim 15, Lin-Hendel discloses that the first class of items comprises featured items and the second class of items comprises non-featured items (e.g., Lin-Hendel, Figs. 2A-2B and related text concerning featured items and categories).

Claim 16 is rejected on the same basis as claim 1.

Claim 17 is rejected on the same basis as claim 1.

Claim 18 is rejected on the same basis as claim 1.

Claim 19 is rejected on the same basis as claim 2.

Claim 20 is rejected on the same basis as claim 3.

Claim 21 is rejected on the same basis as claim 4.

Claim 22 is rejected on the same basis as claim 12.

Claims 7, 8 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable Lin-Hendel (US 7542920) in view of Naylor et al. (PG-PUB 20010049648) and further in view of Lynch (US 7296033).

As per claim 7, Lin-Hendel and Naylor do not specifically disclose defining a plurality of time slots within a given period of available selling time for the listed item, including posting to the one or more networked servers definitions of the time slots;

identifying one of the plurality of time slots corresponding to the listing start time, including posting to the one or more networked servers an identification of the time slot; and

determining automatically the listing duration based at least in part upon the identified time slot, using one or more computing devices. These features are disclosed by Lynch, as in col. 6, lines 17-46.

It would have been obvious to one of ordinary skill in the art at the time of invention to have modified the invention of Lin-Hendel and Naylor to have included,

defining a plurality of time slots within a given period of available selling time for the listed item, including posting to the one or more networked servers definitions of the time slots;

identifying one of the plurality of time slots corresponding to the listing start time, including posting to the one or more networked servers an identification of the time slot; and

determining automatically the listing duration based at least in part upon the identified time slot, using one or more computing devices.

as taught by Lynch because

(a) the incorporation of such features is no more than the predictable use of prior art elements according to their established function; further

(c) it was well within the capabilities of one of ordinary skill in the art at the time of Appellant's invention to use known techniques to improve similar devices, methods and products; further

(d) it was well within the capabilities of one of ordinary skill in the art at the time of Appellant's invention to apply a known technique to a known device, method and product ready for improvement to yield predictable results.

As per claim 8, Lin-Hendel discloses that a given period of available selling time is one day (e.g., Lin-Hendel, col. 2, lines 4-18).

As per claim 10, Lin-Hendel discloses listing a new featured item when a current listing duration of a item exceeds the determined listing duration for a corresponding time slot, including posting a listing request to the one or more networked server (e.g., Lin-Hendel, Fig. 2B and related text).

### ***Allowable Subject Matter***

Claim 9 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter. The prior art neither anticipates nor renders obvious the combination, inter alia,

automatic determining the listing duration for a time slot comprises:  
tracking a number of items that have had their reserve prices met during each time slot, using one or more of the computing devices; and  
dividing a time length of the time slot by the number of items that have had their reserve prices met during the time slot using one or more of the computing devices.

The closest US prior art is a combination of Lin-Hendel, Naylor et al. and Lynch, which disclose the limitations of claim 7. However, the combination neither anticipates nor renders obvious the limitations of claim 9.

The closest non-patent literature is Ausubel et al., Frontiers of Theoretical Economics, vol. 1, Issue 1, 2002, downloaded from ProQuestDirect on the Internet on

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10/25/2010, 45 pages. However, Ausubel neither anticipates nor renders obvious the claimed combination.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAMES ZURITA whose telephone number is (571)272-6766. The examiner can normally be reached on 8am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey A. Smith can be reached on (571)272-6763. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/James Zurita/  
James Zurita  
Primary Examiner  
Art Unit 3625  
25 October 2010